No. 11471

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

PETE GARCIA CERVANTES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

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TABLE OF AUTHORITIES CITED

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APPELLEE'S BRIEF.

Jurisdictional Statement.

Appellant was indicted under the Selective Training and Service Act of 1940, as amended (50 U. S. C. App. 311). The District Court had jurisdiction of the cause under Section 24 of the Judicial Code (28 U. S. C. 41(2)). The offenses charged were committed in the City of Los Angeles, State of California, in that defendant's board was located therein [R.[1] 88, 92-3, 28]. Judgment was entered on October 31, 1946 [R. 7-8]. Notice of Appeal was filed on November 8, 1946 [R. 16-17]. This Court has jurisdiction under Section 128 of the Judicial Code (28 U. S. C. 225).

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[1]References preceded by the symbol "R" are to the printed Record on Appeal.

Statutes and Regulations Involved.

A. Section 11 of the Selective Training and Service Act of 1940, as amended (50 U. S. C. App. 311) provides, in part:

> "* * * any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, * * * shall, upon conviction in the district court of the United States having jurisdicton thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, * * *"

B. The Selective Service Regulations provide:

> "633.21 *Duty of registrant to report for and submit to induction.* (a) When the local board mails to a registrant an Order to Report for Induction (Form 150), it shall be the duty of the registrant to report for induction at the time and place fixed in

such order. If the time when the registrant is ordered to report for induction is postponed, it shall be the continuous duty of the registrant to report for induction upon the termination of such postponement and he shall report for induction at such time and place as may be fixed by the local board. Regardless of the time when or the circumstances under which a registrant fails to report for induction when it is his duty to do so, it shall thereafter be his continuous duty from day to day to report for induction to his local board and to each local board whose area he enters or in whose area he remains."

Other portions of the regulations which are discussed throughout this brief are set forth for convenience in Appendix A of this brief.

Statement of the Case.

The Grand Jury sitting at Los Angeles returned an indictment in two counts, which was filed in the United States District Court for the Southern District of California, Central Division, on August 21, 1946, charging appellant with violations of the Selective Training and Service Act of 1940, as amended (50 U. S. C. App. 311), [R. 2-3]. This statute will be referred to hereinafter as the Act.

Count One charged that the appellant failed to report for induction as so notified and ordered to do [R. 2-3]. Count Two charged the appellant with evading service in the Armed Forces of the United States by leaving the United States and going to Mexico [R. 3].

Trial was had on appellant's plea of not guilty to both counts on October 30 and 31, 1946, and the jury returned a verdict of guilty on both counts on October 31, 1946 [R. 4, 7]. The District Court thereupon sentenced appellant to imprisonment in a penitentiary for two years on each count, the periods to begin and run concurrently [R. 8].

Statement of Facts.

Appellant was born in Mexico on August 12, 1919 [R. 96]. His parents moved to the United States in 1923, bringing him with them [R. 96] and he attended Los Angeles public schools until he was eighteen [R. 87], and then worked in and around Los Angeles [R. 87-88]. He is married and has three children [R. 120]. His residence in the United States was unbroken from 1923 until October 30, 1942, but he has never become a citizen or declared his intention of becoming a citizen [R. 97-98].

Appellant registered on October 16, 1940, at Local Board No. 199 for Los Angeles County [Gov. Ex. 4, R. 88]. On October 19, 1942, appellant was classified 1A by his board, and Notice of Classification mailed him [Gov. Ex. 5, R. 64]. An Order to Report for Induction on November 9, 1942, was sent to appellant and was received by him on about October 23, 1942 [Gov. Ex. 6, 9, 10, Deft. Ex. B; R. 88, 92-3, 119].

After receiving the Order, appellant, on October 30, 1942, crossed the border into Mexico, and did not come back into the United States until July 14, 1946 [Gov. Ex. 9, 10; R. 88-9, 93-4].

As to Count One, the failure to report for induction, all the allegations of the indictment were stipulated to by appellant's counsel, except the question of intent, wilfullness, and knowledge [R. 36]. As to Count Two, the evidence was not disputed as to the date that appellant went to Mexico, the date of his return to the United States, and the fact that he was in Mexico during the entire interval.

Appellant admitted on various occasions that he went to Mexico on October 30, 1942, to avoid service in the Armed Forces of the United States. He admitted it in a signed statement to an agent of the Federal Bureau of Investigation [Gov. Ex. 9, R. 88]; in a signed statement to an Immigration Inspector [Gov. Ex. 10, R. 93]; in a signed application for a visa to come from Mexico to the United States [Deft. Ex. B, R. 119]; and in the course of his testimony in open court in this case [R. 107]. In interviews with officers of the United States Probation Office, appellant confessed a feeling of guilt while he was in Mexico [R. 42-3, 55, 61, 75].

On December 23, 1942, in Mexico, appellant signed a paper purporting to be an enlistment in the Mexican Army [Deft. Ex. F; R. 110, 171-172]. However, appellant never at any time served in the Armed Forces of Mexico [R. 132, 133], nor did he at any time ever make any request to Local Board No. 199 for permisison to serve in the Armed Forces of Mexico [R. 131-132].

Summary of Argument.

Appellant's specifications of error fall into four groups:

I. The failure of the Court to give requested instructions concerning portions of the Act and Selective Service Regulations dealing with the rights and duties of aliens (Specifications of Error Nos. 1-5, A. B.[2] 6-7, 11-16).

II. The failure of the Court to give a requested instruction on a Treaty between United States and Mexico relating to the military service of nationals of either residing in the other (Specification of Error No. 6, A. B. 8, 17-21).

III. The failure of the Court to give a requested instruction on a Selective Service Regulation relating to delinquent registrants (Specification of Error No. 7, A. B. 8-10, 22-24).

IV. The refusal of the Court to continue the case for the purpose of permitting a witness offered by appellant to be present, and the refusal of the Court to admit in evidence a written offer of proof as to such witness's testimony (Specification of Error No. 8, A. B. 10, 24-27).

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[2]References preceded by the symbol "A. B." are to Appellant's Opening Brief.

ARGUMENT.

I.

The Court Properly Refused to Give the Requested Instructions Dealing With the Rights and Obligations of Aliens Under the Act.

The first Specification of Error (A. B. 6) merely states that the District Court failed to instruct the jury on all the statutes and regulations involved in the case, but no statutes or regulations so omitted are specified by appellant, other than those set forth in subsequent Specifications of Error.

Specifications of Error Nos. 2 and 4 (A. B. 6-7) deal with refusals of the District Court to give requested charges as to the exemption of aliens from the Act; and Specifications of Error Nos. 3 and 5 (A. B. 6-7) deal with refusals of the District Court to give requested charges to the effect that the Act and regulations did not set up norms or standards for determining whether persons were in exempted categories or entitled to certificates of non-residence. None of these are well taken.

The Act makes residence of non-citizens the primary test of their liability thereunder. Section 2 of the Act (50 U. S. C. App. 302), begins: "Except as otherwise provided in this Act, it shall be the duty of every male citizen of the United States, and of every other male person residing in the United States", who falls between certain ages, to register.

Section 3(a) of the Act as originally enacted in 1940 (Act of September 16, 1940, c. 720, Sec. 3(a), 54 Stat. 885), began: "Except as otherwise provided in this Act, every male citizen of the United States, and every male alien residing in the United States who has declared his

intention to become such a citizen" between certain ages is liable for training and service in the Armed Forces. It was only after Pearl Harbor that Section 3(a) was amended to read "Except as otherwise provided in this Act, every male citizen of the United States, and every other male person residing in the United States * * *" (Act of Dec. 20, 1941, c. 602, Sec. 2, 55 Stat. 845). Thus, by this amendment, aliens residing in the United States who had not declared their intention to become citizens of the United States became for the first time liable for service, unless otherwise exempted in the Act, though they had always been required to register.

By the same amendment (Act of Dec. 20, 1941, c. 602, Sec. 4, 55 Stat. 845), Sec. 5(a) of the Act, which listed certain categories of persons who were to be exempt from training and service, was amended. As so amended, Sec. 5(a) listed as exempt the following, the 1941 amendment consisting of the insertion of the single italicized phrase:

> "* * * and diplomatic representatives, technical attachés of foreign embassies and legations, consuls general, consuls, vice consuls, and consular agents of foreign countries, *and persons in other categories to be specified by the President,* residing in the United States, who are not citizens of the United States, and who have not declared their intention to become citizens of the United States, * * *"

No blanket exemption of aliens such as appellant from registration and service was ever issued by the President. Procedures were provided for in the regulations, however, whereby an alien who had not declared his intention of becoming a citizen of the United States could obtain a determination as to whether or not he was "a male person residing in the United States" within the Act. These

procedures consisted of an Alien's Application for Determination of Residence, made to his Local Board, and the issuance of either an Alien's Certificate of Nonresidence, or a Notice of Determination of Alien's Residence. These procedures are contained in Sections 611.13, 611.21, 611.21-1, and 611.22 of the Selective Service Regulations, which are set forth in an Appendix to this Brief, and pertinent portions of which were included in the charge of the District Court [R. 186-188]. There is no evidence that the appellant ever sought such a determination.

Thus, from the law and the facts it is clear that the appellant was subject to registration and service under the Act. His residence in the United States was continuous and unbroken for 17 years when he registered, and for 19 years when he was ordered to report for induction. The Act made residence of aliens the test of liability to service, and nowhere were aliens such as the appellant exempted by Presidential proclamation. Even if appellant had availed himself of the procedures for obtaining a determination of his residence by Selective Service, it is inconceivable that any result could be reached but that he was a resident.

When each Specification of Error is considered separately, it is clear that the ruling of the District Court was correct in each instance. Appellant's Proposed Instruction No. 5 [R. 10, Specification of Error No. 2] merely states that aliens must register unless they fall within the classes exempted by Section 5(a) of the Act. The Dis-

trict Court read this Section of the Act to the jury in his charge [R. 185-186].

Appellant's Proposed Instruction No. 7 [R. 11, Specification of Error No. 4], is a mis-statement of the statute, for it would exempt all aliens who have not declared their intentions to become citizens of the United States from the Act, irrespective of residence, whereas the contrary is clear, as is pointed out above.

Appellant's Proposed Instructions Nos. 6 and 8 [R. 11, 12, Specifications of Error Nos. 3 and 5] raise the question of whether any standards are prescribed in the Act or Regulations to determine whether or not a person is in one of the "other categories" or is a resident of the United States. As indicated above, the President never exempted from the Act any specific category of persons residing in the United States which would include the appellant. Likewise, it is difficult to conceive of any definition of "residence" under which appellant would be anything but a resident of the United States. Appellant was not entitled to a Certificate of Nonresidence, and he never even applied for one. For these reasons the regulations thereon were not material or relevant to the issues in the case. Such charges that the District Court did give on the subject were adequate [R. 186-188]. Furthermore, the use of "residence" as a test for imposing legal duties and obligations is widespread in our jurisprudence. It is a word of art much construed. Any attempt to draw a finer distinction in regulations would take away the flexibility desirable to meet different factual situations.

II.

The Court Properly Refused to Give a Requested Instruction Construing the Treaty Between Mexico and the United States.

Appellant's Proposed Instruction No. 9 [R. 12, Specification of Error No. 6] is a summary of provisions of a Treaty between the United States and Mexico, relating to military service of nationals of each residing in the other.

Section IX of the Treaty between Mexico and the United States provided:

> "Nationals of each country who have been registered for or inducted into the Army of the other country in accordance with the military service laws of the latter and who have not declared their intention to acquire the citizenship of the country in which they reside shall upon being designated by the country of which they are nationals and with their consent be released for military service in its forces provided that this has no prejudicial effect on the common war effort. The procedure for the transportation and turning over of these persons will be agreed upon by the appropriate authorities of the two countries who are empowered to bring about the objectives desired." (57 Stat. 973, 976.)

Appellant never fell within the provisions of this treaty. There is no evidence he was ever "designated" by Mexico. He was never called for service in Mexico [R. 132, 133]. He left the United States to avoid the draft by his own admissions, and the crime complained of in the indictment was completed before he ever even signed the so-called enlistment papers in Mexico.

Further, Section 633.91 of the Regulations provides that a registrant may request a transfer to the armed forces of another country at any time prior to induction.

This regulation was read to the jury by the District Court in its charge [R. 188-9]. Appellant never requested such a transfer [R. 131-2]. Appellant's so-called enlistment in the Mexican Army was obviously only an afterthought and an attempt to mitigate the seriousness of the crime already committed.

In the case of *Stumpf v. Sanford,* 145 F. (2d) 270, 271 (C. C. A. 5th, 1944), cert. den. 324 U. S. 876, the Court, in a dictum, stated that enlistment in the Canadian Army was not a defense to a charge of failure to notify a draft board of change of address, where the defendant had never reported such enlistment to his draft board, nor made claim to the Draft Board of exemption from Selective Service Regulations because of such enlistment.

III.

The Court Properly Refused to Give a Requested Instruction Embodying the Regulation Dealing With Delinquent Registrants.

Appellant's Proposed Instruction No. 15 [R. 14, Specification of Error No. 7] consists of Selective Service Regulation 642.21, dealing with the procedure to be followed for the delivery of delinquent registrants. A mere reading of this requested instruction demonstrates its complete irrelevancy.

Further, Section 642.2 of the Regulations which deals with delinquent registrants, provides:

> "Compliance by a local board or any other agency of the Selective Service System with any or all of the procedures prescribed by this part of the Selective Service Regulations is not a condition precedent to the prosecution of any person under the provisions of section 11 of the Selective Training and Service Act of 1940, as amended."

IV.

The Court Properly Excluded the Proposed Testimony of Eugene Cordeau, Sr.

Specification of Error No. 8 deals with the refusal of the District Court to continue the trial in order to permit Eugene Cordeau, Sr., to testify, and in refusing to admit a written offer of proof as to what his testimony would be. The testimony referred to related to conversations between appellant and Cordeau in Mexico between April, 1945 and appellant's reentry into the United States, and to steps taken by Cordeau on appellant's behalf [R. 4-6]. This testimony is clearly irrelevant and immaterial since it is of occurrences and conversations long after the crimes charged in the Indictment were committed. It is also incompetent because it consists of self-serving declarations of appellant. In the case of *Pacman v. United States*, 144 F. (2d) 562, 563 (C. C. A. 9th, 1944), cert. den., 323 U. S. 786, this Court sustained a ruling of the lower court excluding from evidence a lengthy letter written by the defendant to the State Director of Selective Service after he had received an Order to Report for Induction. The Court held that the letter was clearly self-serving and could throw no light on the question of intent, since the only intent involved was the intent to disobey the Order of the Local Board. In the present case the appellant has admitted on the stand what his intent was, and his self-serving declarations made at some other time out of court are clearly incompetent.

The testimony of Cordeau was also offered to explain the Treaty between the United States and Mexico, discussed under Point II above, and to relate steps taken and communications sent and received between Cordeau and the

appellant's local board concerning appellant's delinquency. Both of these matters, as pointed out under Points II and III above, respectively, are clearly immaterial, irrelevant and incompetent.

Conclusion.

It is clear from the record that the appellant had a fair and full trial. The only disputed fact was as to appellant's intent, and his own admissions and testimony leave no doubt that his intent was to avoid the draft. The points raised by appellant either deal with matters occurring long after the crime charged was committed, or seek to question appellant's status as an alien under the Act and Regulations. The first are clearly irrelevant, immaterial, and incompetent, and the latter have no basis in fact or law. Wherefore, appellee respectfully prays that the judgment of conviction be affirmed.

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APPENDIX A.

I. Aliens.

611.13 When a nondeclarant alien is not residing in the United States. (a) A male alien who is now in or hereafter enters the United States who has not declared his intention to become a citizen of the United States is not "a male person residing in the United States" within the meaning of section 2 or section 3 of the Selective Training and Service Act of 1940, as amended, provided:

(1) He is a diplomatic representative, a technical attache of a foreign embassy or legation, a consul general, a consul, a vice consul, or a consular agent of a foreign country; or

(2) He is a full time official or employee of a foreign government and a national of the country employing him who has been notified to the Department of State; provided that at the time he is notified to the Department of State, a proper representative of his government advises and after investigation the Department of State and the Director of Selective Service agree that he is in fact not residing in the United States; or

(3) The Secretary of State and the Director of Selective Service agree that he is a full time official or employee of a recognized public international organization, who has entered the United States for the sole purpose of engaging in such employment and has been so engaged continuously since his arrival here, or has at all times during his stay in the United States and prior to his employment by such recognized public international organization been exempt from training and service under the Selective Training and Service Act of 1940, as amended.

(4) He is a dependent male child under twenty-one years of age of any person described in subparagraphs (1), (2), or (3) of this paragraph; or

(5) He is and was at the time of his entry into the United States in the active service of the armed forces of a cobelligerent or a neutral country; or

(6) He is an individual designated, or is within a group of individuals described, by the Director of Selective Service as not required to present himself for and submit to registration; or

(7) He has, within the time prescribed and in the manner provided in section 611.21, filed with the local board with which he is registered, or if he is not registered, with the local board having jurisdiction over the area in which he is located, an Alien's Application for Determination of Residence (Form 302), together with an Alien's Personal History and Statement (Form 304), and such application is either pending or has resulted in the issuance by the local board of an Alien's Certificate of Nonresidence (Form 303) which has not expired.

(b) Each alien in one of the categories described in subparagraphs (1), (2), (3), (4), (5), or (6) of paragraph (a) must have in his personal possession, at all times, an official document issued pursuant to authorization of or described by the Director of Selective Service which identifies him as a person not required to present himself for and submit to registration and must exhibit it in the same manner and to the same persons as a registrant is required to exhibit a Registration Certificate (Form 2) under section 617.1.

II. Procedure for Determining When Alien Is Residing in the United States.

611.21 What aliens may apply for a determination. Any nondeclarant alien who has entered or who hereafter enters the United States in a manner prescribed by its laws, except a nondeclarant alien described in subparagraphs (1), (2), (3), (4), (5), and (6) of section 611.13, may file with his local board, if he is registered, or with the local board where he is at the time located, if he is not registered, an Alien's Application for Determination of Residence (Form 302); provided, that such application is filed within 90 days after the date of his entry into the United States or within 90 days after persons of his age become liable for training and service by law, whichever is the later; and provided further, that such application is filed prior to induction. An Alien's Personal History and Statement (Form 304) must be filed with such application.

611.21-1 Application filed after 3 months. Any alien who has not complied with the provisions of section 611.21 or section 611.26 may file an Alien's Application for Determination of Residence (Form 302) and an Alien's Personal History and Statement (Form 304) with a local board for transmittal to the Director of Selective Service for consideration.

611.22 Determination by local board. (a) As soon as possible after an alien who is entitled to do so files with the local board an Alien's Application for Determination of Residence (Form 302), together with an Alien's Personal History and Statement (Form 304), the local board shall determine whether such alien is "a male person residing in the United States" within the meaning of section

2 and section 3 of the Selective Training and Service Act of 1940, as amended.

(b) If the local board determines that such alien is "a male person residing in the United States" within the meaning of section 2 and section 3 of the Selective Training and Service Act of 1940, as amended, it shall mail to such alien a Notice of Determination of Alien's Residence (Form 305).

(c) If the local board determines that such alien is not "a male person residing in the United States" within the meaning of section 2 or section 3 of the Selective Training and Service Act of 1940, as amended, it shall also determine the period of time such alien may continue to remain in the United States without becoming "a male person residing in the United States" and the last day of any period thus determined shall be known as the expiration date.

(d) When the determination referred to in paragraph (c) of this section has been made by the local board, it shall (1) prepare an Alien's Certificate of Nonresidence (Form 303), recording thereon the expiration date; (2) notify the alien to report to the office of the local board; and (3) require the alien, when he reports, to sign the Alien's Certificate of Nonresidence (Form 303) in the presence of a member or the clerk of the local board. The member or the clerk of the local board in whose presence the alien signs the Alien's Certificate of Nonresidence (Form 303) shall then sign the certificate on behalf of the local board and shall deliver the certificate to the alien. If the alien has registered, he shall be required to surrender his Registration Certificate (Form 2) to the local board before such member or clerk delivers the Alien's

Certificate of Nonresidence (Form 303) to him. If the alien has registered and delivers his Registration Certificate (Form 2) to the local board, such Registration Certificate (Form 2) and the Registration Card (Form 1) for the alien shall be canceled by marking across the faces thereof the words "Canceled-Nonresident Alien," and each such canceled Registration Certificate (Form 2) and such canceled Registration Card (Form 1) shall be retained in the files of the local board.

611.23 Appeal to Director of Selective Service from local board's determination. (a) At any time within 10 days after the local board mails to an alien a Notice of Determination of Alien's Residence (Form 305), such alien may appeal to the Diretor of Selective Service from the determination of the local board that he is "a male person residing in the United States" within the meaning of section 2 and section 3 of the Selective Training and Service Act of 1940, as amended. Such appeal may be taken by such alien by filing a signed written statement that he appeals from such determination or by signing and filing the statement of appeal on the Notice of Determination of Alien's Residence (Form 305). When such an appeal is filed by the alien, he may at the same time, file such additional information as he wishes to call to the attention of the Director of Selective Service.

(b) The Director of Selective Service or the State Director of Selective Service may appeal to the Director of Selective Service at any time from any determination of the local board made under the provisions of section 611.22. Either the Director of Selective Service or the State Director of Selective Service may take such an appeal by filing with the local board a written statement that he appeals.

(c) When an appeal from a determination made by the local board under the provisions of section 611.22 is taken, the local board shall transmit the entire file of the alien, through the State Director of Selective Service, to the Director of Selective Service, retaining in its record only a copy of the letter or transmittal listing the items contained in the file which is forwarded.

Sections 611.23, 611.24 and 611.25 of the Regulations provide respectively for appeals from determinations of the local board to the Director of Selective Service, for the Director's determination of the issue, and for the action to be taken by the local board to notify the alien on receipt of the Director's determination. Section 611.26 provides for an alien's second or subsequent application for a determination.

611.27 Effect of pending application. When an alien is entiled to and does file an Alien's Application for Determination of Residence (Form 302), he is not required to present himself for and submit to registration during the period when such application is being considered by the local board; during the period within which an appeal may be taken from the determination of the local board to the Director of Selective Service; or, if an appeal is taken, during the period the Director of Selective Service is considering the appeal.

611.28 Effect of determination. Every alien who is entitled to and does file an Alien's Application for Determination of Residence (Form 302) shall be "a male person residing in the United States" within the meaning

of section 2 and section 3 of the Selective Training and Service Act of 1940, as amended, when:

(1) The local board has determined that he is such "a male person residing in the United States" and he does not take an appeal to the Director of Selective Service from such determination within the 10-day period in which he is permitted to do so.

(2) The Director of Selective Service has determined that he is such "a male person residing in the United States."

(3) Either the local board or the Director of Selective Service has determined that he is not such "a male person residing in the United States" and he remains in the United States after the expiration date; provided that when such alien files a second or subsequent Alien's Application for Determination of Residence (Form 302) before the expiration date, he shall not be considered to be such "a male person residing in the United States" either while such second or subsequent application for a determination is pending or during any further period for which a new Alien's Certificate of Nonresidence (Form 303) is issued as a result of the determination thereon.

III. Cobelligerent Aliens

633.91 Induction and subsequent classification of cobelligerent aliens. (a) At any time prior to his induction into the land or naval forces of the United States, a registrant who is not a citizen of the United States and who

has not declared his intention to become a citizen of the United States but who is a citizen or subject of a cobelligerent nation may request and be permitted to be inducted into the armed forces of such cobelligerent nation, provided an agreement has been entered into between the United States Government and the government of such cobelligerent nation, the terms of which permit such induction and give to citizens or subjects of the United States residing in such cobelligerent nation a reciprocal right to serve in the land or naval forces of the United States.

(b) The manner in which, the time when, and the place where a request may be made by such registrant and the procedure to be followed in order for such registrant to be inducted into the armed forces of the cobelligerent nation of which he is a citizen or subject shall be prescribed by the Director of Selective Service.

(c) When such registrant files a request for induction into the armed forces of the cobelligerent nation of which he is a citizen or subject and fails to report for or to be inducted into the armed forces of such cobelligerent nation, he shall, if acceptable, be inducted into the armed forces of the United States when his order number is reached.

(d) When it has been determined that any registrant has been inducted into the armed forces of a cobelligerent nation in the manner in this section provided, his classification shall be reopened and he shall be placed in Class I-G.

IV. Delinquency

642.2 Compliance with procedures of this part [dealing with delinquent registrants] *not condition precedent to prosecution.* Compliance by a local board or any other agency of the Selective Service System with any or all of the procedures prescribed by this part of the Selective Service Regulations is not a condition precedent to the prosecution of any person under the provisions of section 11 of the Selective Training and Service Act of 1940, as amended.

V. Delivery of Delinquent Registrants

642.21 Procedure. (a) If a delinquent reports or is brought before a local board other than his own local board, the local board to which he reports or before which he is brought shall advise his own local board by telegram or other expeditious means that the delinquent has reported to or has been brought before such local board and that he will be inducted or assigned to work of national importance, as the case may be, if it is satisfactory to his own local board. The registrant's own local board shall reply by telegram or other expeditious means.

(b) If the registrant's own local board advises or if it is ascertained from the United States Department of Justice that the registrant is delinquent because he has failed to respond to an Order to Report for Induction (Form 150) or an Order to Report for Work of National Importance (Form 50), the delinquent shall be delivered for induction or steps taken to assign him to work of national importance, and the local board to which the registrant has reported or before which he has been brought shall prepare such papers as may be necessary in order to effect

such induction or assignment and forward copies thereof to the registrant's own local board. The induction or assignment of such a registrant shall be reported to the registrant's own local board in the same manner as if the registrant had been transferred for delivery to the local board from which such registrant was inducted or assigned.

(c) If the registrant's own local board advises that an Order to Report for Induction (Form 150) or an Order to Report for Work of National Importance (Form 50) has not been issued to such registrant or that the registrant is no longer a delinquent, it shall advise the local board before which the registrant has appeared or has been brought of the action to be taken with reference to such registrant.